TAN KIM HOCK

v.

HUANG YANN CHONG

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
ABU MANSOR ALI JCA
MOKHTAR SIDIN JCA
[CIVIL APPEAL NO: W-04-23-97]
12 JANUARY 1999

LANDLORD & TENANT: *Controlled premises - Recovery of possession - Restriction on right to possession - Breach of tenancy obligation - Subletting of premises without landlord's consent - Breach of law relating to local authorities - Whether a ground for recovering possession - Whether tenant no longer protected - Whether order of possession justified - Control of Rent Act 1966, ss. 16(1)(i) & (k), (2)*

CIVIL PROCEDURE: *Jurisdiction - Sessions Court - Claim for double rent - Whether from date of holding over - Maximum quantum allowable - Whether limited to RM100,000 - Subordinate Courts Act 1948, ss. 65(1), 70*

WORDS & PHRASES: *"exposes the landlord to any penalty, fine or forfeiture" - "exposure to conviction" - Control of Rent Act 1966, s. 16(1)(k)*

The respondent let his controlled premises to the appellant for the latter to carry on the business of a licensed boarding house. The respondent subsequently alleged that the appellant was in breach of his tenancy obligations, and on that ground, sought to recover possession of the premises and double rent thereof. In the Sessions Court, the respondent led evidence which showed, *inter alia*, that: (i) the appellant had sublet certain parts of the premises without the respondent's consent; (ii) the appellant, without the respondent's consent and in apparent contravention of some building by-laws, had carried out major repairs to the premises; (iii) the Datuk Bandar, following the renovations, had issued a notice under s. 70(1)(13c) of the Street, Drainage and Building Act 1974 ('the 1974 Act') requesting that the respondent submit a renovation plan or face possible prosecution under the 1974 Act; and (iv) a notice to quit ('P5') was sent to the appellant on 18 February 1986 by way of AR and ordinary post.

The aforesaid facts notwithstanding, the appellant contended that the respondent was not entitled to possession, arguing that the tenancy had not been validly terminated as he had not received P5, and further that, since the Datuk Bandar did not follow up on his notice the respondent therefore had not been exposed to any conviction under the 1974 Act. The learned Sessions Court judge however ruled that the appellant, on the facts: (i) was presumed to have received P5; (ii) was in breach of the provision of s. 16(1)(i) of the Control of Rent Act 1966 ('the Act') by subletting the premises; and (iii) was in breach of s. 16(1)(k) of the Act when he carried out the unauthorised repairs to the premises. The court, in the circumstances, granted vacant possession to the respondent. The learned Sessions Court judge also allowed the respondent's claim for double rent, but limited the amount thereunder to RM100,000.

The appellant appealed against the decision to deliver vacant possession, whilst the respondent cross-appealed against the order limiting his claim for double rent to RM100,000. The appellant's appeal was dismissed by the High Court, but the respondent's cross-appeal was allowed wherein the court ruled that it was wrong of the Sessions Court to have limited the quantum of double rent to RM100,000. Dissatisfied, the appellant appealed further.

Held:

Per Mokhtar Sidin JCA

[1] Bearing in mind the facts, and s. 12 of the Interpretation Act 1967, the courts below were correct in their decision that the evidence of posting of P5 was good evidence of service on the appellant. It is clear that when there is evidence of posting it shall be presumed to have been effected at the time when the letter would have been delivered in the ordinary course of the post. There was in this case a valid termination of the tenancy by the respondent.

[2] A landlord is entitled to repossession once a breach is committed under any provision of the Act. In this case, there was clear evidence that the appellant had sublet parts of the premises to third parties without the respondent's consent. In the circumstances, the learned Sessions Court judge was correct in the finding that there was a breach of s. 16(1)(i) of the Act by the appellant. On this breach itself the respondent was entitled to recover possession of the premises.

[3] Under s. 16(1)(k) of the Act, when a tenant commits a breach of any law which exposes the landlord to any penalty, fine or forfeiture then it is a breach which entitles the landlord to repossess the premises. The respondent herein, as landlord, had received a notice from the Datuk Bandar to submit a plan for the renovations failing which the respondent

would be exposed to a criminal prosecution. It was thus clear that the respondent was exposed to a conviction by the act of the appellant in carrying out the renovations in question. The Datuk Bandar's notice was an "exposure to conviction" on the respondent, and it was immaterial whether there was a follow-up of that notice or not.

[4] The learned High Court judge had allowed the payment of double rent from April 1966, that being the respondent's claim in his statement of claim. This part of the High Court's order, however, could not be correct as (i) the breaches committed by the appellant commenced in late 1985, and (ii) the notice to terminate the tenancy and to deliver vacant possession was given on 18 February 1986.

[4a] Double rent is normally allowed for the refusal to vacate the premises and for holding over. In the present case, the effective date of holding over was 1 April 1986, and as such, double rent could only be awarded as from 1 April 1986.

[5] Although the Sessions Court has the jurisdiction to hear matters where the value is in excess of RM100,000 (pre-1994 amendment), the award of damages must not exceed the limitation imposed on that court. This being the case, the judgment awarded to the respondent should be limited to a sum not exceeding RM100,000 which was the jurisdiction of the Sessions Court at the time when the order was made. The learned High Court judge should not have disturbed the order made by the Sessions Court judge.

[Appeal and cross-appeal dismissed. Order of High Court in respect of cross-appeal set aside.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Responden menyewakan premis dikawal miliknya kepada perayu untuk perayu menjalankan perniagaan rumah tumpangan berlesen. Responden kemudiannya mengatakan bahawa perayu adalah memungkiri obligasi-obligasi sewaannya dan atas sebab tersebut, memohon untuk mendapatkan kembali milikan premis tersebut berserta sewa bergandanya. Didalam Mahkamah Sesyen, responden mengemukakan bukti yang menunjukkan antara lain, bahawa (i) perayu telah menyewa kecil bahagian-bahagian tertentu premis tersebut tanpa kebenaran responden; (ii) perayu, tanpa kebenaran responden dan secara yang kelihatan melanggar undang-undang kecil bangunan, telah melakukan pembaikan besar-besaran pada premis tersebut; (iii) berikutan dengan pengubahelokan tersebut, Datuk Bandar telah mengeluarkan satu notis di bawah s. 70(1)(13c) Akta Jalan, Parit dan Bangunan 1974 ('Akta 1974') meminta supaya responden

menyerahkan satu pelan pengubahelokan atau menghadapi kemungkinan pendakwaan di bawah Akta 1974; dan (iv) suatu notis keluar ('P5') telah dihantar kepada perayu pada 18 Februari 1986 melalui AR dan pos biasa.

Walaupun dengan kewujudan fakta-fakta di atas, perayu mendakwa bahawa responden tidak berhak ke atas milikan, dengan menghujahkan bahawa sewaan tersebut telah tidak ditamatkan secara sah kerana beliau belum lagi menerima P5, dan selanjutnya, bahawa memandangkan Datuk Bandar tidak mengambil sebarang langkah susulan kepada notis beliau, maka responden tidak terdedah kepada sebarang sabitan di bawah Akta 1974 tersebut. Yang Arif Hakim Mahkamah Sesyen bagaimanapun memutuskan bahawa perayu, berdasarkan fakta-fakta (i) telah diandaikan menerima P5; (ii) telah melanggar peruntukan s. 16(1)(i) Akta Kawalan Sewa 1966 ('Akta') melalui tindakannya menyewa kecil premis tersebut; (iii) telah melanggar peruntukan s. 16(1)(k) Akta bilamana beliau melaksanakan pengubahelokan yang tidak dibenarkan pada premis tersebut. Mahkamah, dalam keadaan sedemikian, telah memberi milikan kosong kepada responden. Yang Arif hakim Mahkamah Sesyen juga telah membenarkan tuntutan responden untuk sewa berganda, tetapi menghadkan jumlahnya setakat RM100,000.

Perayu membuat rayuan terhadap keputusan untuk menyerah milikan kosong, manakala responden membuat rayuan balas terhadap perintah yang menghadkan tuntutan untuk sewa bergandanya setakat jumlah RM100,000. Rayuan perayu telah ditolak oleh Mahkamah Tinggi tetapi rayuan balas responden telah dibenarkan di mana mahkamah telah memutuskan bahawa Mahkamah Sesyen adalah salah dalam menghadkan kuantum sewa berganda tersebut setakat RM100,000. Berasa tidak puas hati, perayu membuat rayuan lanjut.

Diputuskan:
Oleh Mokhtar Sidin HMR

[1] Dengan mengambil kira fakta-fakta, dan s. 12 Akta Tafsiran 1967, mahkamah-mahkamah di bawah adalah tepat dalam keputusan mereka bahawa keterangan tentang pengeposan P5 adalah bukti yang mencukupi bagi penyerahan terhadap perayu. Adalah jelas bahawa apabila terdapat bukti yang menunjukkan pengeposan, patut diandaikan bahawa ia telah terlaksana pada masa surat tersebut akan tiba jika diposkan secara biasa. Dalam kes ini terdapat suatu penamatan sewaan yang sah oleh responden.

[2] Tuan tanah berhak untuk mendapat milikan semula sebaik sahaja berlaku kemungkiran di bawah mana-mana peruntukan Akta. Dalam kes ini, terdapat bukti yang jelas bahawa perayu telah menyewa kecil sebahagian daripada premis tersebut kepada pihak ketiga tanpa kebenaran responden. Dalam keadaan tersebut, yang arif hakim Mahkamah Sesyen adalah tepat

dalam dapatan beliau bahawa terdapat perlanggaran s. 16(1)(i) Akta oleh perayu. Atas sebab perlanggaran tersebut sendiri, responden berhak untuk mendapat milikan semula premis tersebut.

[3] Di bawah s. 16(1)(k) Akta, apabila seorang penyewa melanggar apa-apa undang-undang yang mendedahkan tuan tanah kepada sebarang penalti, denda atau lucuthak, maka ianya suatu perlanggaran yang menyebabkan tuan tanah mendapat milikan semula premis tersebut. Responden, sebagai tuan tanah, telah menerima suatu notis daripada Datuk Bandar supaya menyerahkan suatu pelan bagi pengubahelokan tersebut di mana kegagalan berbuat demikian akan mendedahkan beliau kepada pendakwaan jenayah. Maka adalah jelas bahawa responden adalah terdedah kepada sabitan akibat tindakan perayu yang melakukan pengubahelokan secara besar-besaran yang tersebut. Notis oleh Datuk Bandar adalah suatu "pendedahan kepada sabitan" terhadap responden, dan adalah tidak penting samada terdapat suatu tindakan susulan terhadap notis tersebut atau tidak.

[4] Yang Arif hakim Mahkamah Tinggi telah membenarkan pembayaran sewa berganda dari April 1966, memandangkan ianya adalah tuntutan responden dalam pernyataan tuntutan beliau. Bahagian tersebut dalam perintah Mahkamah Tinggi, bagaimanapun, tidak boleh dikatakan sebagai tepat kerana (i) perlanggaran-perlanggaran yang dibuat oleh perayu bermula sejak lewat 1985; (ii) notis untuk penamatan sewaan dan menyerahkan milikan kosong telah diberikan pada 18 Februari 1986.

[4a] Sewa berganda biasanya dibenarkan bilamana seorang penyewa enggan mengosongkan premis dan kerana pemegangan lepas masa. Dalam kes ini, tarikh berkesan untuk pemegangan lepas masa adalah pada 1 April 1986 dan oleh itu sewa berganda cuma boleh diawardkan bermula dari tarikh 1 April 1986.

[5] Walaupun Mahkamah Sesyen mempunyai bidang kuasa untuk mendengar perkara-perkara di mana nilainya adalah melebihi RM100,000 (sebelum pindaan 1994), award-award kerugian mestilah tidak melebihi had yang telah dikenakan ke atas mahkamah tersebut. Memandangkan keadaan itu, penghakiman yang telah diawardkan kepada responden patut dihadkan kepada jumlah yang tidak melebihi RM100,000 yang merupakan bidang kuasa Mahkamah Sesyen semasa perintah tersebut dibuat. Yang arif hakim Mahkamah Tinggi tidak sepatutnya mengganggu perintah yang telah dibuat oleh hakim Mahkamah Sesyen tersebut.

[Rayuan dan rayuan balas ditolak; perintah oleh Mahkamah Tinggi berkenaan rayuan balas diketepikan.]

Cases referred to:

Abdul Ghaffar v. Perbadanan Pembangunan Bandar [1986] 2 MLJ 158 ***(foll)***
Cheam See Loo Brothers v. Kong Yoon Choy & Anor [1973] 2 MLJ 13 ***(dist)***
China Airlines Ltd v. Maltran Air Corp Sdn Bhd [1996] 3 CLJ 163 ***(refd)***
Dr Ng Teng Kok & Ors v. Cheah See Kian & Ors [1987] 2 MLJ 245 ***(foll)***
Goh Gok Hoon v. Eusuff Bros Sdn Bhd [1990] 2 MLJ 421 ***(foll)***
Mohamed Abu Bakar Yusof v. PA Syed Aboothahir P Ahmed [1990] 1 CLJ 112 ***(foll)***
Ong Tua Chor v. Lee Beng Tong [1976] 1 MLJ 187 ***(foll)***
Wawasan Cempaka Sdn Bhd v. Bank Islam Malaysia Bhd [1997] 1 CLJ 762 ***(foll)***

Legislation referred to:

Control of Rent Act 1966, s. 16(1)(i), (k), (2)
Interpretations Act 1948 & 1967, s. 12
Street, Drainage and Building Act 1974, s. 70(1)(13c)
Subordinate Courts Act 1948, ss. 65(1), 70

For the appellant - YT Ling; M/s Lee Ling & Partners
For the respondent - Tommy Thomas (Lim Chee Wee with him); M/s Skrine & Co

[Appeal from High Court, Kuala Lumpur; Civil Appeal No: R1-12-483-93]

Reported by WA Sharif

JUDGMENT

Mokhtar Sidin JCA:

The appellant in this appeal was the defendant when the action commenced in the Sessions Court and the respondent was the plaintiff. The respondent in his reamended statement of claim claimed that he is the landlord of the premises known as No. 335, Jalan Tuanku Abdul Rahman, Kuala Lumpur (hereinafter referred to as the "said premises"). The respondent let the said premises to one Tan Ah Poh (deceased), who was the father of the appellant. Some time in November 1985, the appellant represented to the respondent's PA (respondent's son) that the appellant wanted to do minor repairs to the said premises. In December 1985, contrary to what he had said, the appellant carried out major repairs and renovations of the said premises without the respondent's consent and without the approval from the relevant authorities whereby the respondent claimed that the repairs and the renovations would expose the respondent to penalty or fine by the relevant authorities. The respondent claimed that when the said premises was let to the late appellant's father it was for the purpose of carrying on business of a licensed boarding house. The respondent claimed that the appellant had ceased to carry on the business of a licensed boarding house and since 15 August 1988 was not residing at the said premises any longer. In addition respondent discovered that the appellant, without the respondent's knowledge, had sublet the said premises to a sub-tenant who was carrying on the business of an eating shop.

In view of the breach the respondent by a notice in writing dated 18 February 1986 demanded the appellant to quit and deliver vacant possession of the said premises on or before 31 March 1986. The appellant refused and failed to deliver vacant possession whereby the respondent took up the present action.

The appellant in his statement of defence admitted doing some repairs and renovations to the said premises and that the said premises was solely a business premises and as such falls within s. 16(2) of the Control of Rent Act 1966 (hereinafter referred to as the "Act"). Appellant pleaded that at all material times before and after 15 August 1985 he has been carrying on the business of hotel and food catering under a partnership in the name and style of International Hotel. Further, appellant pleaded that there was no notice to quit dated 18 February 1986 and even if there was such a notice, that notice was invalid because it was issued without just cause and justification.

In the Sessions Court the respondent succeeded in his claim and he was given vacant possession of the said premises. The claim for double rent from 26 May 1986 till delivery of vacant possession was allowed but instead the Sessions Court judge limited the amount under that claim to RM100,000.

Being dissatisfied with that decision the appellant appealed to the High Court. The respondent also being dissatisfied with the decision of the Sessions Court judge in limiting the claim of double rent, cross-appealed. The High Court dismissed the appeal by the appellant and allowed the cross-appeal by the respondent. In the High Court the appellant raised three issues, namely:

1. validity of termination of tenancy of appellant/defendant;
2. whether respondent has succeeded to prove his case under s. 16(1)(i) of the Act; and
3. whether respondent has succeeded to prove his case under s. 16(1)(k) of the Act.

The same issues were raised before us in this appeal. In addition to these three issues, the appellant raised the issue of the cross-appeal by the respondent in the High Court.

First Issue: Validity Of Termination Of Tenancy Of Appellant

Learned counsel for the appellant submitted that the notice dated 18 February 1986 was never received by the appellant. Appellant admitted receiving three previous letters but not the notice (exh. P5). In the Sessions Court evidence was adduced by the respondent that letters, namely exhs. P2, P3 and P4 were sent by the respondent to the appellant by ordinary post to the address at the premises and there was no denial by appellant of receiving those letters.

Exhibit P5 was sent to the appellant at the same address by A.R. and by ordinary post. Counsel for the appellant contended that there was no proper address and also the envelope and the A.R. card was not exhibited. He went on to submit that though respondent produced exh. P38 which was a record of posting there was no address written in exh. P38 and therefore, the Sessions Court judge was wrong to conclude that the letter was posted to the correct address and that since it was not returned it was deemed to be received by the appellant.

It is clear to us that this was a finding of fact. The High Court judge who heard the appeal in the High Court, in his judgment said that the delivery by ordinary post, without contrary provisions in the Statute, could be accepted as evidence of service of P5 on the appellant. He went on to say that from the evidence of the despatch clerk it is clear that P5 was sent by ordinary post and by A.R. From the record only the A.R. card was returned but not the one by way of ordinary post. The despatch clerk also gave evidence that she was the one who sent the letter and this was evidenced by the entry in her handwriting. The learned High Court judge said that the Sessions Court judge had taken into consideration all the evidence adduced before her including the evidence that the appellant was still carrying on his business at the said premises. In fact the appellant admitted in his pleading that he was staying at the said premises at the relevant time. As such there was strong indication that exh. P5 which was sent to the premises was received by the appellant. The learned High Court judge agreed with the conclusion made by the Sessions Court judge.

Counsel for the appellant submitted though this is a question of fact as found by the Sessions Court and confirmed by the High Court, nevertheless, this court can reverse the finding of facts which depends upon inferences drawn from other facts. He cited the case of *China Airlines Ltd. v. Maltran Air Corp. Sdn. Bhd.* [1996] 3 CLJ 163; [1996] 2 MLJ 517. With the greatest respect to the learned counsel we found that there is nothing wrong with the inferences of facts drawn by the Sessions Court judge. We agree with the learned High Court judge that the Sessions Court judge came to the right conclusion.

Section 12 of the Interpretations Act 1967 provides as follows:

> 12. **Service by post.**
>
> **Where a written law authorises or requires a document to be served by post, then, until the contrary is proved, service:**
>
> (a) shall be presumed to be effected by properly addressing, prepaying and posting by registered post a letter containing the document; and
>
> (b) **shall be presumed to have been effected at the time when the letter would have been delivered in the ordinary course of the post.** (emphasis made)

It is clear to us that when there is evidence of posting it shall be presumed to have been effected at the time when the letter would have been delivered in the ordinary course of the post. This is what the Sessions Court judge concluded. Thus in the case of *Abdul Ghaffar v. Perbadanan Pembangunan Bandar* [1986] 2 MLJ 158 Harun J (as he then was) when he addressed his mind to a notice to quit at pp. 158-159, said:

> The respondent contends that the notice to quit is good because it took effect the moment it was put in the post on January 30, 1982. The question then is where a notice to quit is delivered through the post, when does it become effective – time of posting or time of receipt.
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> In *Papillon v. Brunton* at page 1286, Pollock C.B. held "that in the case of a notice to quit the putting it into the post-office is sufficient, and that the party sending it is not responsible for its miscarriage."
>
> In *Gresham House Estate Co. v. Rossa Grande Gold Mining Co.* it was held that if a letter properly directed, containing a notice to quit, is proved to have been put into the post-office, it is presumed that the letter reached its proper destination at the proper time according to the regular course of business of the post-office, and was received by the person to whom it was addressed.
>
> In my view taking these two authorities together, a notice to quit sent by registered post is effective at the time when the notice would have been delivered in the ordinary course of the post.

As such we are of the view that the learned Sessions Court judge whose decision was affirmed by the learned High Court judge came to the correct decision that the evidence of posting is good evidence of service on the appellant. For that reason we will not disturb the finding of service by the learned Sessions Court judge.

Second Issue: Breach Under S. 16(1)(i) Of The Act

Section 16(1)(i) provides as follows:

> 16. Restriction on right of possession
>
> (1) Except for an application made under section 18 and 19 for the recovery of possession of any controlled premises or any part thereof for the purpose of effecting or causing to be effected thereon any development, all applications for the recovery of possession of such premises or any part thereof shall be made to a court; and no order or judgment for the recovery or possession of any controlled premises or any part thereof comprised in a tenancy shall be made or given by the court except in any of the following cases:
>
> ...

(i) where neither the tenant nor any member of his family is personally in occupation of the controlled premises or any part thereof;

...

(2) For the purpose of subsection (1)(i) where the controlled premises or part thereof has been let or subsequently allowed by the landlord to be used as business premises, the tenant or a member of his family shall be deemed to have occupied such premises or part thereof, so long as he uses such premises or part thereof for his business or trade, notwithstanding that such tenant or such member of his family does not reside therein; but where the controlled premises or part thereof has been let as domestic premises, the tenant or a member of his family shall not be deemed to have so occupied such premises or part thereof unless such tenant or such member of his family resides therein.

It is clear to us that the respondent gave notice to terminate the tenancy on two grounds. One was under s. 16(1)(i) and the other under s. 16(1)(k) of the Act. We will deal with the second ground later. It was not disputed that the premises were first let to the appellant's father in order for him to carry out the business of a licensed boarding house. As can be seen above sub-s. (2) provides that other than premises which were let for domestic premises which were let out for business purposes, physical occupation of the premises by the tenant or his family is not necessary. As such in the present appeal there was no necessity for the appellant or his family to be in physical occupation or residing in the said premises. It is sufficient for the tenant to run the business at the said premises. In the present appeal it is clear that the appellant pleaded that he was residing at the said premises. From the facts admitted it is clear to us that the original tenant had passed away and that the tenancy was passed to the appellant, the son of the original tenant.

The evidence as found was that the said premises were let to the appellant's father for the purpose of carrying on the business of a hotel under the name of "International Hotel". It was not disputed by the appellant that when his father ran the business it was a sole proprietorship and that when his father passed away in 1969, he took over that business of a hotel (a sole proprietorship) in the same name. The appellant continued to pay the rent which was accepted by the respondent. On 18 February 1986 the respondent through his solicitors issued a notice to recover possession for breaches committed by the appellant. The notice was the subject matter of the first issue which we have dealt with earlier. In March 1986, the respondent refused to accept the rent paid by the appellant and the appellant refused to vacate the said premises.

The problem leading to the issuance of the notice arose when the appellant informed the respondent's son who was having the power of attorney of the respondent that he was going to carry out minor repairs to the said premises. Apparently the respondent's son allowed the appellant to do the minor repairs. Subsequently, the respondent discovered that repair works done by the appellant were not minor repairs but major renovations. Respondent alleged that he or his son did not consent to major renovations being done to the said premises without the approval of the relevant authorities which is the third issue.

As a result of that the respondent made inquiries and discovered that the appellant was not in occupation of the said premises since 15 August 1985 and that the appellant had sublet the premises. As a result of those discoveries the respondent then issued the notice to quit dated 18 February 1986.

In the court below the respondent's son gave evidence that he made inquiries into the appellant's business and discovered that the appellant had stopped the business of the hotel as a sole proprietorship on 18 May 1985. Then on 18 May 1985 the appellant through a partnership started a new business of a hotel. Though the same name "The International Hotel" was used as the one under the sole proprietorship, it is clear from the registration of business produced in court the appellant had terminated the sole proprietorship of his father and started a partnership to run the hotel in the same name. As such the distinction of the International Hotel before and after 18 May 1985 was only the ownership. After 18 May 1985 the International Hotel ceased to be a sole proprietorship and became a partnership of which appellant was holding a 20 percent share.

It is the contention of the respondent, since the appellant is holding only 20 percent shares of the business, that business does not belong to him. For that reason the appellant was not deemed to be in occupation of the said premises in accordance with s. 16(2) of the Act. It was contended by the appellant that though he was holding only 20 percent share of the hotel business, it was in the business alone that there was a partnership and not in the tenancy because he had not entered into any tenancy agreement with the other partners or tenants. The respondent on the other hand contended that owning 20 percent share of the business is not sufficient to prove that the appellant owned the business of a licensed boarding house and that the business belonged to him to enable him to carry on with the tenancy of the said premises.

In addition to the above breaches the respondent had adduced evidence that the appellant had sublet part of the premises to one Kudu bin Abdul as a restaurant. The said Kudu bin Abdul gave evidence in court that he had rented part of the said premises from the appellant and used it as a restaurant. There

was no evidence of rebuttal from the appellant. The respondent also adduced evidence of another breach in that, part of the premises was rented and used as a ticketing office for an express bus company, Sri Nilam. Again there was no evidence of rebuttal.

In our view those were facts upon which the learned Sessions Court judge had to consider in order to decide whether the appellant had committed the breach under s. 16(1)(i) of the Act as alleged by the respondent. The learned Sessions Court judge had decided and found that there were ample evidence to support her finding, we are not in the position to disturb her finding. We are of the view that based on the circumstances and facts of the present appeal, s. 16(2) of the Act is not available to the appellant.

In our view on this breach itself the respondent is entitled to recover possession of the said premises. Once a breach is committed under any provision of the Act then the landlord is entitled to repossession of the said premises. In *Goh Gok Hoon v. Eusuff Bros. Sdn. Bhd.* [1990] 2 MLJ 421 where at p. 422 Wan Yahya J (as he then was) said:

> Legally, the first respondent should have supplied the appellant with the particulars of the subletting in accordance with s. 20 of the Control of Rent Act 1966 which reads:
>
> > (1) Where a tenant has sublet any part of the controlled premises, the tenant shall within fourteen days after each subletting or in the case of a subletting effected before the date of the coming into force of this Act within three months after that date:
> >
> > (a) supply the landlord with a statement in writing of the subletting, giving particulars of the occupancy, including the name of the subtenant and the rent charged;
>
> In the present case, he did not do so. In my opinion, failure to comply with s. 20(1)(a) constitutes an offence for which the first respondent can be punished in accordance with s. 20(6). Now, the provision of s.16(1) on which the appellant's first claim is based authorizes repossession of controlled premises in the following instance:
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> > where any obligation of the tenancy other than the payment of rent (whether under the contract of tenancy or under this Act), so far as the obligation is consistent with this Act, has been broken or not performed by the tenant and the court considers it reasonable that such order or judgment be made or given;
>
> The mandatory provision of s. 20(1)(a) in directing the tenant to supply his landlord with the particulars of his subletting is clearly an obligation on the tenant, arising from and consistent with the Control of Rent Act 1966. The failure of the tenant to comply with that section therefore must lead to a breach of the obligation envisaged under s. 16(1)(b) above.

Third Issue: Breach Under S. 16(1)(k) Of The Act

Section 16(1)(k) of the Act provides as follows:

> 16. Restriction on right to possession
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> (1) Except for an application made under section 18 and 19 for the recovery of possession of any controlled premises or any part thereof for the purpose of effecting or causing to be effected thereon any development, all applications for the recovery of possession of such premises or any part thereof shall be made to a court; and no order or judgment for the recovery or possession of any controlled premises thereof comprised in a tenancy shall be made or given by the court except in any of the following cases –
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> ...
>
> (k) where the tenant or any other person occupying the controlled premises under him has committed a breach of any written law in force in Malaysia relating to local authorities, or of any role or by-law made thereunder, affecting the premises which exposes the landlord to any penalty, fine or forfeiture, and the court considers that such order or judgment should be made or given;

Under s. 16(1)(k) of the Act, it is clear that when a tenant committed a breach of any law which exposes the landlord to any penalty, fine or forfeiture then it is a breach which entitled the landlord to repossess the premises. In the present appeal the respondent alleged that the breach committed by the appellant was in doing the repairs and renovations on the said premises without approval of the relevant authorities. As stated earlier it was common ground that the appellant did approach the respondent's son to get his permission to do minor repairs on the said premises and the respondent's son agreed. Respondent subsequently discovered that the works done were not minor repairs but major renovations which were as follows:

(a) broke and tore down the side wall at the ground floor approximately 15 feet and turned it into a self-contained reception area which did not exist before. In order to turn into a room, the appellant constructed another wall and a new entrance from the side of the building whereby originally the only entrance was through the ground floor;

(b) relocated the position of the staircase which was originally about 20 feet from the side to a place about 10 to 20 feet from the original position of the staircase;

(c) changed the original wooden partition in the front to a collapsible gate; and

(d) repair works to the second floor premises without increasing the height of the building.

It was also common ground that the respondent on discovering the renovation works were being done protested against it and requested the appellant to stop the works immediately. The appellant did not stop the works but went on and completed them. The appellant admitted that no plan was submitted to the relevant authorities for those works done. Anyway, appellant gave evidence that after the works were completed and after receiving a notice from the Datuk Bandar to submit the relevant plan, he approached the respondent to get the respondent's signature on the said plan. The respondent refused to sign the said plan because he took the stand that he did not agree with the renovation works done. In the notice from the Datuk Bandar, it was stated that non submission of the plan would subject the relevant parties to prosecution, penalty and fine. In addition to that notice, respondent also called an architect to give evidence showing that the renovations done were not in accordance with the Street, Drainage and Building Act 1974 and its by-laws.

The notice by the Datuk Bandar was issued pursuant to a report submitted by the Federal Territory Fire Services Department to the Jabatan Pelesenan, Dewan Bandaraya Kuala Lumpur after inspecting the said premises. The notice issued by the Datuk Bandar, Dewan Bandaraya Kuala Lumpur was under s. 70(1)(13c) of the Street, Drainage and Building Act 1974 to the respondent requesting him to submit the relevant plan for the renovations done to his premises and stating that failure to do so, will make him liable for an offence under the Act.

Learned counsel for the appellant submitted that, that notice was not a charge and as such it did not expose the respondent to prosecution in the light of the relevant acts. Furthermore he said, the Datuk Bandar did nothing to follow up on that notice. As such there was no evidence to show that the respondent was exposed to a conviction by the act of the appellant. The question for us to decide is whether that notice by the Datuk Bandar tantamount to exposing the respondent to a conviction.

What is meant by "exposure to conviction"? In the case of *Cheam See Loo Brothers v. Kong Yoon Choy & Anor* [1973] 2 MLJ 13, Ong CJ (as he then was) delivering the judgment of the Federal Court at p. 14 said:

> We fear that in so deciding the learned judge would appear to have disregarded the Court of Appeal decision given by Thomson C.J. in *Hooi Chuk Kwong v. Lim Saw Choon* on the proper interpretation of the phrase "which exposes the landlord to any penalty, fine or forfeiture" in paragraph (k) of section 13(1) of the Control of Rent Ordinance 1948. There it was held that "exposure to prosecution is not enough. There must be exposure to conviction and there is no exposure to conviction unless facts exist which would support a conviction". The appeal was allowed on this ground which, being the *ratio decidendi* therein, was binding on the High Court. In the instant case the Raub Town

> Council had decided in 1969 not to prosecute because they were of the opinion that there was no breach of the building by-law. Such being the undisputed facts – and no prosecution having arisen during the three subsequent years – the respondents clearly could not in 1972 maintain that they were "exposed" to any penalty, fine or forfeiture. The appellants therefore were protected tenants because paragraph (k) was not available to the landlords as a ground for recovering possession. Even had the Town Council acted wrongly in deciding not to prosecute, it was well within their powers so to act because section 18 of the Town Boards Enactment (Cap. 137) gave the Chairman an absolute discretion to compound offences and the Town Council cannot by *mandamus* be ordered to prosecute.

This is the leading authority in respect of the expression "exposure to conviction" and has been followed. In that case it was clear that the landlord was not exposed to a conviction. The Town Council had already decided that the act of the tenant did not breach any of the by-laws and that it had no intention to prosecute the landlord or the tenant. In the present appeal, however, the facts are different. Here the respondent as landlord had received a notice from the Datuk Bandar to submit the plan for the renovations done by the appellant failing which would expose him to a criminal prosecution. To us whether there is a follow-up of that notice or not is not important, the important thing is that that notice is an "exposure to conviction" on the respondent.

The present appeal is somewhat similar to the case of *Ong Tua Chor v. Lee Beng Tong* [1976] 1 MLJ 187. In that case the respondent claimed for repossession of a two-storey shophouse from the appellant/tenant on the ground that the appellant as tenant had contravened the provisions of s. 16(1)(k) of the Control of Rent Act 1966. The appellant had erected an illegal partition on the premises in contravention of the building by-laws, and as a result of a complaint lodged by the respondent to the Town Council the appellant was prosecuted and on his plea of guilty was convicted in the lower court. The learned magistrate gave judgment for the respondent and ordered the appellant to give vacant possession of the premises to the respondent. Counsel for the appellant contended that since the respondent himself had initiated the prosecution he could not rely on the ground that the tenant had exposed him to conviction. It was held that the fact that the appellant was prosecuted because of the complaint made to the Town Council by the respondent was immaterial and could not affect the right of the respondent to avail himself of the ground afforded him under s. 16(1)(k) of the Control of Rent Act in recovering possession of the demised premises. At p. 188, Ajaib Singh J (as he then was) said:

After perusing the record in this appeal and after considering the submissions advanced on behalf of the parties I have come to the conclusion that the appeal must fail. There can be no doubt that by erecting the illegal partition the appellant had exposed the respondent to a fine because the contravention of the building by-laws made the respondent as the owner of the premises guilty thereof no less than his tenant the appellant who had put up the illegal partition. The appellant was convicted and fined under section 92(i)(c) of the Town Boards Enactment for having contravened the building by-laws by putting up the partition on the ground floor of the premises and the respondent became liable himself under section 93(ii) of the Enactment which states that:

> Where any building operations are commenced or carried out in respect of any building they shall be deemed to have been commenced or carried out by the owner of the holding whereon such building is erected, and he shall be liable therefor.

The fact that the appellant was prosecuted because of the complaint made to the Town Council by the respondent was quite immaterial and could not affect the right of the respondent to avail himself of the ground afforded to him under section 16(1)(k) of Control of Rent Act in recovering possession of the demised premises. The facts in the case of *Cheam See Loo Brothers, supra,* were quite different from those in the present case before me. In that case the Town Council had received a complaint from the respondents alleging that the appellants had committed a breach of the building by-laws by erecting a corrugated iron roof over the kitchen area of the demised premises. The Town Council replied saying that the Council did not propose to take any action on the complaint with the result that the appellants were never prosecuted for the alleged breach of any building by-law. The Federal Court held following the decision in the case of *Hooi Chuk Kwong v. Lim Saw Choo* that for a claim to succeed under section 16(1)(k) of the Control of Rent Act exposure to prosecution was not enough. There must be exposure to conviction and there could be no exposure to conviction unless facts existed which would support a conviction. ...

It is clear from the evidence that the Sessions Court judge and the High Court judge found that the notice issued by the Datuk Bandar to the respondent (exh. P13) and a failure to comply with that notice would expose the respondent to be prosecuted and convicted. We have no reason to disagree with their findings because from the facts it is clear that the respondent was exposed to conviction by the act of the appellant in carrying out the major renovations to the said premises.

Fourth Issue: The Cross-Appeal On The Damages Awarded

Appellant submitted that the learned High Court judge had erred in allowing the cross-appeal by the respondent against the decision of the Sessions Court judge who had limited the damages awarded to the respondent not to exceed the sum of RM100,000. In his amended statement of claim at para. 8(2), the

respondent claimed double rent as from 1 April 1966 till date of delivery of vacant possession. The monthly rent as agreed between the respondent and the appellant's father was RM1,000pm. The statement of claim was filed on 22 May 1986 and it was finally reamended on 24 June 1988. As such all this was done before the jurisdiction of the Sessions Court in civil matters was amended. The learned Sessions Court judge gave her decision on 11 December 1993. All these happened before the Subordinate Courts Act 1948 was amended. When the decision was given the civil jurisdiction of the Sessions Court as stated in s. 65(1) was that it had jurisdiction to try all actions and suits of a civil nature where the amount in dispute or value of the subject matter does not exceed one hundred thousand ringgit.

In the High Court, the learned judge allowed the cross-appeal by the respondent. His reason for doing so was because he agreed with the submission of the learned counsel for the respondent as stated in the last paragraph of his judgment which is as follows:

> Mengenai rayuan silang responden/plaintif, Mahkamah ini bersetuju dengan penghujahan-penghujahan peguam terpelajar responden/plaintif seperti dihuraikannya dimuka surat 40 hingga 42 penghujahan bertulisnya. ...

From the record of appeal it is clear that the respondent was claiming the amount in excess of RM100,000. It was submitted by the counsel for the respondent that the respondent under s. 70 of the Subordinate Courts Act could obtain judgment in a sum in excess of RM100,000. It appears to us that this found favour with the learned High Court judge. For that reason the cross-appeal by the respondent was allowed by the learned High Court judge. When he allowed the cross-appeal it appears to us that the learned High Court judge had allowed the payment of double rent from April 1966 since that was the claim by the respondent in his statement of claim.

We are of the view that this part of the order could not be correct. It is undisputed that the breaches committed by the appellant commenced in late 1985. The notice to terminate the tenancy and to deliver vacant possession was given on 18 February 1986 to take effect on or before 31 March 1986. In our view, double rent is normally allowed when a tenant refused to vacate the premises and holding over. In the present case the effective date of holding over is 1 April 1986 and as such in our opinion double rent could only be awarded as from 1 April 1986.

To support his contention that the respondent is entitled to a sum in excess of RM100,000, counsel for the respondent cited the case of *Wawasan Cempaka Sdn. Bhd. v. Bank Islam Malaysia Bhd.* [1997] 1 CLJ 762; [1996] 3 MLJ 317 and *Dr. Ng Teng Kok & Ors. v. Cheah See Kian & Ors* [1987] 2 MLJ 245. *Wawasan Cempaka Sdn. Bhd.* decided that though the Sessions Court has the

jurisdiction to hear matters where the value is in excess of RM100,000 (pre-1994 amendment), the award of damages must not exceed the limitation imposed for that court. In the present case it is RM100,000. This position was made clear in the case of *Mohamed Abu Bakar s/o Yusof v. PA Syed Aboothahir s/o P Ahmed* [1990] 1 MLJ 26 where at p. 31 Edgar Joseph Jr., J (as he then was) said:

> ... In my opinion, regard being had to the provisions of s. 28(4)(a), the appropriate order to make is that the defendant be chargeable with double the market rental value of the premises, which in this case would be $109 pm, from the date of expiry of the notice to quit, which would be 1 July 1979 to the date when possession is handed over to the plaintiff. However as this sum would be well in excess of the jurisdiction of the magistrates' court, I would add a rider that the damages payable be limited to the jurisdiction of that court.

The passage cited above appears to support the decision of the Sessions Court judge. In our view the judgment awarded to the respondent should be limited to a sum not exceeding RM100,000 which was the jurisdiction of the Sessions Court at the time when the order was made. The learned High Court judge should not have disturbed the order made by the Sessions Court judge.

For the reasons we have stated above the appeal is hereby dismissed with costs. Order of the High Court judge in respect of the appeal is confirmed. The cross-appeal is hereby dismissed with costs. Order of the High Court judge in respect of the cross-appeal is set aside and the order of the Sessions Court judge is restored and affirmed.